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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re )  
Application of )  
COMMUNITY EDUCATIONAL ASSOCIATION )  
Holly Hill, Florida )  
For A Construction Permit For A New )  
Noncommercial Educational FM Station on )  
Channel 212A )

File No. BPED-930316MF

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge Joseph Chachkin

**PETITION FOR RECONSIDERATION**

WCPX License Partnership, licensee of Television Station WCPX-TV, Orlando, Florida ("WCPX"), by its attorneys and pursuant to Sections 1.104 and 1.106 of the Commission's Rules, hereby petitions for reconsideration of the Initial Decision of Administrative Law Judge Joseph Chachkin (the "Initial Decision") granting the application of Community Educational Association ("CEA") for a construction permit for a new noncommercial educational FM station on Channel 201A at Holly Hill, Florida.<sup>1/</sup> In support whereof, the following is shown.

1/ Initial Decision, Application of Community Educational Association, Holly Hill, Florida, MM Docket No. 94-88, File No. BPED-930316MF (Mar. 14, 1995). The Initial Decision was released on FCC public notice on March 20, 1995. Pursuant to Section 1.106(f) of the Commission's Rules, this petition for reconsideration is timely filed.

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## **I. Introduction**

The Initial Decision granting CEA's application must be reversed because CEA's operation of a noncommercial educational FM station on Channel 201A at Holly Hill, Florida, will result in interference to viewers of WCPX-TV in violation of the Commission's Rules. WCPX-TV operates on Television Channel 6 from Orlando, Florida; it is located 76 kilometers from CEA's proposed transmitter site for the operation of its noncommercial educational FM station. As such, WCPX-TV is an "affected TV Channel 6 station" within the meaning of Section 73.525(a) of the Commission's Rules and is entitled to protection from interference caused by noncommercial educational FM stations. The Commission's Rules prohibit the grant of any application for a new non-commercial educational FM station where the predicted interference area resulting from the proposed facility would contain more than 3,000 people. 47 C.F.R. § 73.525(c) (1995). As shown herein, the predicted interference area resulting from CEA's proposed facility will contain 4,238 persons in violation of this section of the Commission's Rules. The Initial Decision must therefore be reversed.<sup>2/</sup>

## **II. Argument**

### **A. WCPX Was Unable to Participate in Earlier Stages of this Proceeding.**

It was not possible for WCPX to participate in this proceeding at an earlier point because it was unaware of the major amendment that CEA filed in August 1994

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<sup>2/</sup> It is unclear from Section 0.341 of the Commission's Rules whether Judge Chachkin retains jurisdiction over this matter. WCPX respectfully requests that Judge Chachkin refer this petition for reconsideration to the appropriate Commission authority in the event he no longer has jurisdiction over this matter.

modifying its proposal. Originally, CEA had applied to the Commission for authority to operate a noncommercial educational FM station on Channel 212A at Holly Hill, Florida. CEA's application, however, was mutually exclusive with that of Cornerstone Community Radio, Inc. and on August 2, 1994, the two applications were designated for hearing.<sup>3/</sup> On August 30, 1994, in an effort to remove the mutual exclusivity, CEA amended its application to change the requested channel to 201A, to relocate its proposed facility, and to change the proposed tower height and the antenna height above average terrain. According to the Initial Decision, CEA's amendment was accepted by the ALJ in a September 13, 1994 Memorandum Opinion and Order. Initial Decision ¶ 1. However, the September 13, 1994 Memorandum Opinion and Order was never released on public notice. Moreover, although CEA's amendment was listed as received in the FCC's Public Notices released on September 15, 1994, the Public Notice (a copy of which is attached hereto as Exhibit A) includes no information about the nature of the amendment or the changes it proposed. WCPX therefore had no way of knowing about CEA's amendment, and indeed, it was not until the release of the Initial Decision on March 20, 1995, that WCPX became aware of CEA's amended application and the adverse impact it would have on WCPX-TV. Given these circumstances and the level of interference that will be caused to WCPX-TV (as described below), good cause exists for WCPX's late participation in this proceeding.

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3/ See Hearing Designation Order, MM Docket No. 94-88, 9 FCC Rcd 3626 (1994).

**B. CEA's Proposed Facility Will Interfere With Viewers' Reception of WCPX-TV**

CEA's operation of a new noncommercial educational FM station on Channel 201A will create interference to the reception of WCPX-TV's signal by viewers in excess of that permitted by the Commission's Rules. Section 73.525(c) of the Commission's Rules provides that the predicted interference area resulting from the operation of a new noncommercial educational FM facility may not contain more than 3,000 persons, or 4,000 persons if the noncommercial educational FM station effectively installs one filter for each additional person up to 4,000 persons once the station goes on the air. See 47 C.F.R. § 73.525(c)(2). In Exhibits 9 and 9D of its August 30, 1994 amendment, CEA claims that only 2,950 persons will be adversely affected by its operation of the Holly Hill station because it will install filters for the additional 150 persons that would be otherwise adversely affected. However, the Engineering Statement of Charles Cooper of the engineering firm of DuTreil, Lundin & Rackley (attached hereto as Exhibit B) demonstrates that CEA's population figures are incorrect. Specifically, 4,238 persons will receive interference from CEA's station -- 238 persons above the 4,000 limit permitted by Section 73.525(c) assuming CEA agreed to install filters for 1,000 of the persons above the 3,000 threshold. See Engineering Statement at 4. Thus, even if CEA agreed to install filters for 1,000 individuals, its proposed operations from Holly Hill would still violate Section 73.525(c).

**C. The Public Interest Mandates that the Commission Consider WCPX's Petition.**

WCPX recognizes that the engineering information set forth herein was not before the ALJ at the time the Initial Decision was rendered. However, it is in the public interest for this evidence to be considered now. The Commission has consistently recognized

that stations operating on TV Channel 6 are especially vulnerable to interference from NCE FM stations,<sup>4/</sup> and has designed its rules to afford Channel 6 stations the necessary protections from such interference. To ignore WCPX's arguments would contravene basic Commission rules to the detriment of WCPX and a substantial number of its viewers who will lose TV Channel 6 service once CEA's station goes on the air.

### III. Conclusion

The ALJ or appropriate Commission authority must reconsider the Initial Decision granting CEA's application for a new noncommercial educational FM station. As demonstrated herein, operation of the proposed noncommercial educational FM station will

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4/ Memorandum Opinion and Order, Docket No. 20735, 58 RR 2d 629, 630 (1985).

cause interference to a substantial number of WCPX-TV's viewers in excess of that permitted by the Commission's Rules. The Initial Decision granting CEA's application must be reversed.

Respectfully submitted,

WCPX LICENSE PARTNERSHIP

By: Thomas J. Hutton *RAM*  
Ralph W. Hardy, Jr.  
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Its Attorneys

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April 19, 1995

**EXHIBIT A**

September 15, 1994  
FCC Daily Release

REPORT NO. 15878

BROADCAST APPLICATIONS

PAGE NO. 4

AM BROADCAST STATION APPLICATIONS AMENDMENT RECEIVED

IL BP	-940714AC	WRHL 1080KHZ	ROCHELLE BROADCASTING CO., INC. ROCHELLE, IL
MD BAL	-931201GP	WYRE 810KHZ	VISION BROADCASTING COMPANY ANNAPOLIS, MD

ENGINEERING AMENDMENT(940907AB)

AMENDMENT (FILE NO. 940831G2)

NON-COMMERCIAL EDUCATIONAL FM APPLICATIONS ACCEPTED FOR FILING  
(MINOR CHANGE APPLICATIONS ARE SIMULTANEOUSLY ACCEPTED FOR TENDER)

FL BNPED	-940902JC	WFSW 89.1MHZ	FLORIDA STATE UNIVERSITY PANAMA CITY, FL
RI BNPED	-940830JB	WORI 88.5MHZ	ROGER WILLIAMS UNIVERSITY BRISTOL, RI

MP (BPED-900112ME) FOR EXTENSION OF TIME  
1ST REQUEST

MP (BPED-901023MI) FOR EXT OF TIME  
1ST REQUEST

NON-COMMERCIAL EDUCATIONAL FM APPLICATIONS AMENDMENT RECEIVED

FL BPED	-930318MF	NEW 90.3MHZ	COMMUNITY EDUCATIONAL ASSOCIATION HOLLY HILL, FL
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FM TRANSLATOR APPLICATIONS TENDERED FOR FILING

CA	940825TD	NEW 92.7MHZ	ROBERT DAVIDSON BURNLEY, CA
CA	940830TC	NEW 94.9MHZ	ROBERT DAVIDSON DORRIS, CA
NV	940907TB	NEW 99.3MHZ	ELKO TELEVISION DISTRICT WELLS, NV

CP NEW FM TRANSLATOR TO SERVE BURNLEY, CA, CH 224, 92.7 MHZ,  
PRIMARY STATION KWHQ(FM), MT. SHASTA, CA, CH 272, 102.3 MHZ,  
(NL: 40-36-09; WL: 122-39-01), TL: MT. SHASTA - BALLY 13  
MILES W OF REDDING, BURNLEY, CA, ERP 0.010 KW (V)

CP NEW FM TRANSLATOR TO SERVE DORRIS, CA, CH 235, 94.9 MHZ,  
PRIMARY STATION KWHQ(FM), WEED, CA, CH 272, 102.3 MHZ,  
(NL: 41-37-48; WL: 122-13-50), TL: HERD PEAK, 29 MILES + 215  
DEGREES FROM DORRIS, CA, ERP 0.019 KW (H)&(V)

CP NEW FM TRANSLATOR TO SERVE WELLS, NV, CH 257, 99.3 MHZ,  
PRIMARY STATION KRJC(FM), ELKO, NV, CH 237, 95.3 MHZ,  
(NL: 41-11-40, WL: 114-56-36), TL: 7 MILES NNE OF WELLS, NV,  
ERP 0.051 KW (H)

477568



**EXHIBIT B**

**Engineering Statement of Charles A. Cooper  
(original to be provided upon receipt)**

***du Treil, Lundin & Rackley, Inc.***

A Subsidiary of A. D. Ring, P.C.

**ENGINEERING STATEMENT  
CONCERNING THE APPLICATION OF  
COMMUNITY EDUCATIONAL ASSOCIATION  
NEW NON-COMMERCIAL RADIO STATION  
HOLLY HILL, FLORIDA**

Prepared for  
Station WCPX-TV  
WCPX License Partnership  
Orlando, Florida

This Engineering Statement has been prepared on behalf of WCPX License Partnership, licensee of station WCPX-TV on channel six (82-88 MHz) at Orlando, Florida. It concerns the application (BPED-930316MF, amended) filed by Community Educational Association for a new FM non-commercial radio station at Holly Hill, Florida (herein "Holly Hill"). It is demonstrated herein that the proposed facility will cause impermissible levels of interference to WCPX-TV as determined according to Section 73.525 of the FCC Rules.

The Holly Hill application specifies operation from a site located on Route 40 in Flagler county, Florida. It is proposed to operate as a class A facility on channel 201 (88.1 MHz) with a vertically only polarized effective radiated power (ERP) of 2 kilowatts (kW) and an antenna radiation center height above average terrain (HAAT) of 58 meters. The proposal has been studied according to the criteria set forth in Section 73.525 of the Commission's Rules to determine the level of interference that is expected to occur to viewers of WCPX-TV.

Since vertical-only polarization is proposed with a nominal ERP of 2 kW, an equivalent horizontally

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polarized ERP of 0.05 kW was determined according to Section 73.525 (e)(4)(i) using an adjustment figure of 40 for calculation purposes. The distances to the appropriate interfering contours were calculated using terrain averages obtained from the National Geophysical Data Center (N.G.D.C.) 30-second computer database. It is noted that the 6 dB adjustment was not employed to determine the interfering contour as directed by Section 73.525 (e)(4)(i) of the Commission's Rules. The WCPX-TV protected contours were determined based on terrain data extracted from the N.G.D.C. 30-second computer database. All distances to coverage and interfering contours were calculated at ten degrees intervals using the pertinent directional antenna relative field values for both Holly Hill and WCPX-TV.

The proposed Holly Hill transmitter site is located 76 kilometers from WCPX-TV at a bearing of 353 degrees true. To determine the predicted interference area to WCPX-TV from Holly Hill, the value of the WCPX-TV coverage contours and the associated Holly Hill interfering contours were interpolated from Figure 1 shown in Section 73.599. The WCPX-TV coverage contour values, Undesired-to-Desired (U/D) ratios, and Holly Hill interference contour values are tabulated below:

WCPX-TV Coverage Contour (dBu)	Undesired-To- Desired Ratio (dB)	Holly Hill Interfering Contour (dBu)
64	-4.0	60.0
63	-4.0	59.0
62	-3.5	58.5
61	-3.5	57.5

***du Treil, Lundin & Rackley, Inc.***

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WCPX-TV Coverage Contour (dBu)	Undesired-To- Desired Ratio (dB)	Holly Hill Interfering Contour (dBu)
60	-3.0	57.0
59	-2.5	56.5
58	-2.5	55.5
57	-2.0	55.0

As can be seen above, for each integer increment in the WCPX-TV contour value, the associated D/U ratio was interpolated to the nearest one-half decibel value. The predicted interference area was then calculated as the area bounded within the WCPX-TV and Holly Hill contour locus intersections.

The Holly Hill predicted interference area to WCPX is projected onto Figure 1 which shows the 1990 Census Florida County Outline subdivisions and cities. The Holly Hill applicant claims that 3,000 persons are predicted to receive interference to WCPX-TV (see Exhibit #9, footnote 3 in the Holly Hill application). The applicant also pledges to install 150 radio-frequency filters in order to decrease the number of affected persons pursuant to Section 73.525(c)(2). However, our analysis demonstrates that greater than 4,000 persons are predicted to receive interference, which is prohibited by the Commission.

Using the Commission's uniform distribution method, described in Section 73.525(e)(2), of determining the population contained in the interference area, the population encompassed by the interference area is

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calculated to be 4,238 persons as shown on Figure 2; the supporting Census population and area values are tabulated on Figure 3. This value is 238 persons over the maximum threshold assuming 1,000 radio-frequency filters are installed on television receivers located within the predicted interference area. If filters are not installed by the applicant, than the impermissible value is 1,238 persons over the maximum threshold of 3,000 persons.

It is concluded that the Holly Hill facility will result in predicted interference to viewers of WCPX in excess of that permitted by the FCC Rules.



Charles A. Cooper

du Treil, Lundin & Rackley, Inc.  
240 N. Washington Blvd., Suite 700  
Sarasota, Florida 34236  
(813) 366-2611

April 18, 1995

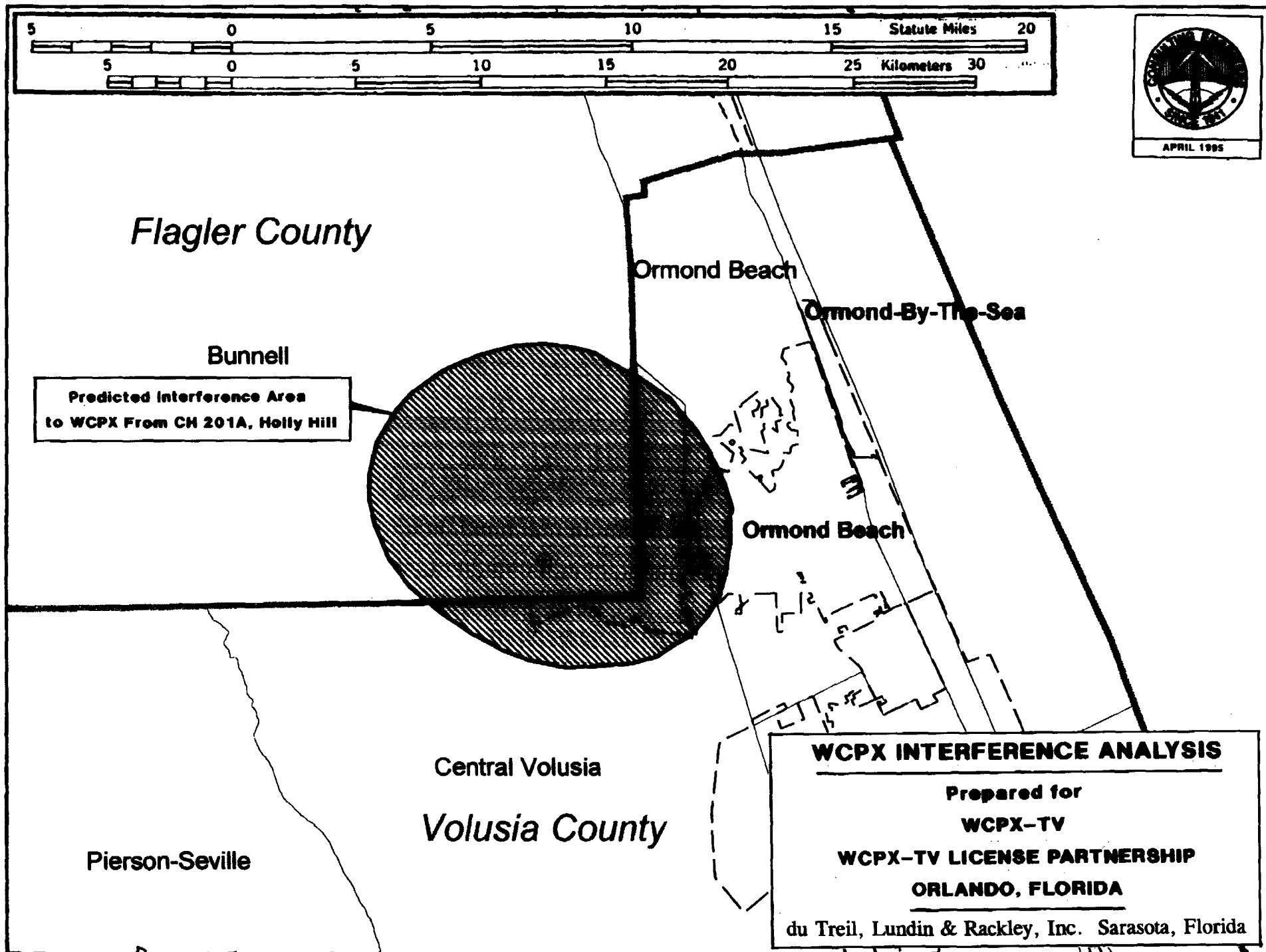


Figure 2

ENGINEERING STATEMENT  
CONCERNING THE APPLICATION OF  
COMMUNITY EDUCATIONAL ASSOCIATION  
NEW NON-COMMERCIAL RADIO STATION  
HOLLY HILL, FLORIDA

Tabulation of Persons within WCPX-TV Interference Area

	<u>Percent of Area</u>	<u>Population in Area</u>
Flagler County		
Bunnell Division	9.0	624
Volusia County		
Central Volusia Division	2.8	211
Ormond Beach City (part)	99.5	736
Ormond Beach Division	4.1	477
Ormond Beach City (part)	9.6	<u>2,190</u>
Total:		4,238







**CERTIFICATE OF SERVICE**

I, Vanese E. Hargrove, hereby certify that a true and correct copy of the foregoing "Petition for Reconsideration" was sent this 19th day of April, 1995, by first class, United States mail, postage prepaid, to the following:

Honorable Joseph Chachkin\*  
Administrative Law Judge  
Federal Communications Commission  
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